

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3772 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

=====

-----  
GANPATBHAI B PATEL

Versus

ADMINISTRATIVE OFFICER  
-----

Appearance:

MR IS SUPEHIA for Petitioner  
Respondent No. 1 is served  
Mr D.N. Patel, AGP for respondents 2 & 3  
-----

CORAM : MR.JUSTICE S.M.SONI

Date of decision: 26/12/96

ORAL JUDGEMENT

The petitioner who is a primary school teacher has filed this petition under Article 226 of the

Constitution of India for directions to respondents to step up his pay equal to that of his junior, one Gordhanbhai Patel with effect from 1.1.1976 and for a further direction to pay the arrears on that basis.

2 The recommendations of Shri I.G. Thakor Award came into force with effect from 1.1.1976 for the purpose of pay fixation and adjustment. As a result of the pay fixation the petitioner started getting less pay than that of Shri Gordhanbhai Patel, Assistant Teacher, who is junior to the petitioner as his date of appointment is 11th July 1969. The petitioner was appointed on 5th December 1968. The petitioner was informed by respondent no.2 that the date of increment had been fixed as per the award of Shri I.G. Thakore and no injustice has been caused. The petitioner has demonstrated the injustice caused to him from the facts stated in Annexure-B to the petition.

3 The petitioner and said Gordhanbhai Patel acquired PTC qualification in the year 1968. The petitioner was appointed on 5th December 1968 while said Gordhanbhai was appointed on 11th July 1969. On 31st December 1975 pay of the petitioner appears to have become Rs.131+155+24.87. On 11th July 1975 the pay of Gordhanbhai became with increment 126+5+150+24.62 and the year-wise pay has been shown thereunder. According to the said statement, the pay of the petitioner on 1st January 1976 was Rs.340 while that of Gordhanbhai Patel was also Rs.340 as per I.G. Thakore's award. As per the said award the petitioner got one increment on 1.1.1977 and his salary became Rs.350 per month while said Gordhanbhai got increment on 1st July 1976 his salary came to be Rs.350 per month. The increment commenced from year to year thereafter. Thus, as it is demonstrated salary of the petitioner as on 1.1.1983 was Rs.416 per month while that of Gordhanbhai Patel's salary was Rs.416. The petitioner got his salary of Rs.428 on 1.1.1984 while Shri Gordhanbhai Patel got the same amount of Rs.428 on 1.7.1983. Thus, from the statement it is clear that said Gordhanbhai was drawing more salary for a period about six months every year. In fact, the case should have been reverse. The petitioner being senior should have drawn more salary than said Shri Gordhanbhai upto for a period of six months. As there was no provision to remove such an anomaly, Government, by resolution of 2nd July 1980 had issued a direction to the following effect:

(relevant being 2nd para, it has been extracted  
with its true translation)

"If the salary of a senior and junior employee on 31st December 1972 is equal and if fixed in the new pay scale then also if the date of the increment of the junior employee comes earlier and if he draws salary more than that of a senior employee, then, in that case, even the primary teachers should be given the benefit of stepping up."

4 In my opinion, this suggests that the petitioner should have been given one increment more to put his case in consonance with the award and the principle under the service jurisprudence that a junior should not draw salary more than that of his senior. The say of the Government that the pay fixation of the petitioner is as per the award of Shri I.G. Thakore, in view of the aforesaid facts, is not correct.

5 In view of the above state of affairs, the petitioner is entitled to be given one increment more to bring his case in consonance with the service jurisprudence.

6 In the result, the petition is liable to allowed. Respondent no.1 is directed to step up and fix the salary of the petitioner at Rs.350 and pay the arrears within six months from today. Rule is made absolute accordingly.

\*\*\*